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Attorneys for Defendants
Accuray Incorporated, Euan S. Thomson, Robert
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

CITY OF ANN ARBOR EMPLOYEES')
RETIREMENT SYSTEM, on Behalf of Itself and)
All Others Similarly Situated,)
Plaintiffs,)
v.)
ACCURAY INCORPORATED, EUAN S.)
THOMSON, ROBERT E. McNAMARA,)
WADE B. HAMPTON, TED TU, WAYNE WU,)
JOHN R. ADLER, JR., and ROBERT S. WEISS,)
Defendants.)

CASE NO.: 09-cv-03362-CW

**STIPULATION AND ORDER
REGARDING CONSOLIDATION
OF SECURITIES CLASS ACTIONS
AND SCHEDULE**

CAPTIONS CONTINUE ON NEXT PAGE

1 MICHAEL WHITTEN, Individually and on)
2 Behalf of All Others Similarly Situated,)
3)
4 Plaintiffs,)
5)
6 v.)
7)
8 ACCURAY INCORPORATED, EUAN S.)
9 THOMSON, ROBERT E. McNAMARA,)
10 WADE B. HAMPTON, TED TU, WAYNE WU,)
11 JOHN R. ADLER, JR., and ROBERT S. WEISS,)
12)
13 Defendants.)
14)
15)

CASE NO.: 09-cv-03637-CW

9 DOUG BENNINGTON, On Behalf of Himself)
10 and All Others Similarly Situated,)
11)
12 Plaintiffs,)
13)
14 v.)
15)
16 ACCURAY INCORPORATED, EUAN S.)
17 THOMSON, ROBERT E. McNAMARA,)
18 WADE B. HAMPTON, TED TU, WAYNE WU,)
19 JOHN R. ADLER, JR., and ROBERT S. WEISS,)
20)
21 Defendants.)
22)
23)
24)
25)
26)
27)
28)

CASE NO.: 09-cv-03813-PJH

Pursuant to Rule 16(d) of the Federal Rules of Civil Procedure, Civil Local Rule 23-1(b), and the Manual for Complex Litigation, Fourth §§ 11.12, 11.21 and 31 (2004), the parties stipulate, and the Court hereby orders, as follows:

CONSOLIDATION OF RELATED CASES

1. The above-captioned actions, *City of Ann Arbor Employees' Retirement System v. Accuray, Inc., et al.*, Case No. C-09-03362-CW, *Whitten v. Accuray, Inc., et al.*, Case No. C-09-03637-CW, and *Bennington v. Accuray, Inc., et al.*, Case No. C-09-03813-PJH, are related cases within the meaning of Civil Local Rule 3-12. Pursuant to Federal Rule of Civil Procedure 42(a), these cases are hereby consolidated into Civil Action No. C-09-03362-CW for pretrial proceedings before this Court. The consolidated action shall be captioned: "*In re Accuray Inc. Securities Litigation.*"

2. All related actions that are subsequently filed in, or transferred to, this District shall be consolidated into this consolidated action for pretrial purposes. This Order shall apply to every such related action, absent order of the Court. A party that objects to such consolidation, or to any other provision of this Order, must file an application for relief from this Order within thirty (30) days after the date on which a copy of the order is mailed to the party's counsel, pursuant to Paragraph 8, *infra*.

3. Plaintiff City of Ann Arbor Employees' Retirement System has served its complaint on all defendants. Defendants agree to waive service of the Whitten and Bennington complaints.

4. This Order is entered without prejudice to the rights of any party to apply for severance of any claim or action, for good cause shown.

MASTER DOCKET AND CAPTION

5. The docket in Civil Action No. C-09-03362-CW shall constitute the master docket for this action.

6. Every pleading filed in the consolidated action shall bear the following caption:

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE ACCURAY INC. SECURITIES)	Master File No. C-09-03362-CW
LITIGATION)	
)	
)	<u>CLASS ACTION</u>

This Document Relates To:

7. The file in Civil Action No. C-09-03362-CW shall constitute a Master File for every action in the consolidated action. When the document being filed pertains to all actions, the phrase “All Actions” shall appear immediately after the phrase “This Document Relates To:”. When a pleading applies only to some, but not all, of the actions, the document shall list, immediately after the phrase “This Document Relates To:”, the docket number for each individual action to which the document applies, along with the last name of the first-listed plaintiff in said action (*e.g.*, “No. C-09-03362-CW (City of Ann Arbor Employees’ Retirement System)).”

8. The parties shall file a Notice of Related Cases pursuant to Civil Local Rule 3-12 whenever a case that should be consolidated into this action is filed in, or transferred to, this District. If the Court determines that the case is related, the clerk shall:

- a) place a copy of this Order in the separate file for such action;
- b) serve on plaintiff’s counsel in the new case a copy of this Order;
- c) direct that this Order be served upon defendants in the new case; and
- d) make the appropriate entry in the Master Docket.

LEAD PLAINTIFF’S COUNSEL

9. The Court shall designate a Lead Plaintiff and Lead Plaintiff’s Counsel, pursuant to 15 U.S.C. § 77z-1(a)(3)(B) and 15 U.S.C. § 78u-4(a)(3)(B). Lead Plaintiff’s Counsel shall have authority to speak for, and enter into agreements on behalf of, plaintiffs in all matters

1 regarding pretrial procedures, discovery, and settlement negotiations. Lead Plaintiff's Counsel
2 shall manage the prosecution of this litigation to avoid duplicative or unproductive activities.
3 Lead Plaintiff's Counsel shall be responsible for coordination of all activities and appearances on
4 behalf of plaintiffs and for dissemination of notices and orders. Lead Plaintiff's Counsel shall be
5 responsible for communications with the Court.

6 10. Defendants' counsel may rely upon agreements made with Lead Plaintiff's
7 Counsel. Such agreements shall be binding on all plaintiffs.

8 PLEADINGS AND MOTIONS

9 11. No defendant is required to respond to the complaint in any action consolidated
10 into this action, other than a consolidated complaint or a complaint designated as the operative
11 complaint after the appointment of Lead Plaintiff and Lead Plaintiff's Counsel.

12 12. After the appointment of a Lead Plaintiff, the Lead Plaintiff shall have sixty (60)
13 days to file and serve a consolidated complaint. The consolidated complaint shall be the
14 operative complaint and shall supersede all complaints filed in any of the actions consolidated
15 herein.

16 13. Defendants shall have sixty (60) days in which to file and serve a motion to
17 dismiss or otherwise respond to the consolidated complaint. If defendants file any motions
18 directed at the consolidated complaint, the opposition and reply briefs shall be filed within sixty
19 and thirty days, respectively, of that response, unless otherwise agreed by the parties.

20 14. Counsel for the parties shall notify their clients of their document preservation
21 obligations pursuant to the federal securities laws and the Local Rules.

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28 ///

1 Dated: September 22, 2009

Respectfully submitted,

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19 Dated: September 22, 2009

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Attorneys for Plaintiff City of Ann Arbor Employees'
Retirement System

1 Dated: September 22, 2009

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28 Attorneys for Plaintiff Doug Bennington

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

10/7/09

Dated: _____



Hon. Claudia Wilken
United States District Judge

ATTESTATION PURSUANT TO GENERAL ORDER 45

I, Diane M. Walters, attest that concurrence in the filing of this document has been obtained from the signatories, Shawn A. Williams, Richard Maniskas and Robert S. Green. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 22nd day of September, 2009 at Palo Alto, California.

By: /s/ Diane M. Walters
Diane M. Walters

Counsel for Defendants
Accuray Incorporated, Euan S. Thomson,
Robert E. McNamara, Wade B. Hampton,
Ted Tu, Wayne Wu, John R. Adler, Jr., and
Robert S. Weiss